

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
BALA EQUITY IV, INC.)	File No. 0000138886
)	
WINSTAR WIRELESS FIBER CORP.)	File No. 0000135598
)	
For Authority to Construct and Operate)	
Facilities in the 39 GHz Band)	

ORDER

Adopted: September 21, 2000

Released: September 22, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On July 31, 2000, Linda Chester (Chester), Southfield Communications LLC (Southfield), and Wireless Telco submitted a pleading captioned “Petition to Deny” regarding the above-captioned application filed by Bala Equity IV, Inc. (Bala Equity) for authorization to operate in the 38.6-40.0 GHz (39 GHz) band.¹ On the same date, Broadband WirelessAccess Services, Stevan A. Birnbaum, Cambridge Partners, Inc., Chester, HiCap Networks, Inc., PIW Development Corporation, Paul R. Likins, William R. Lonergan, Cornelius T. Ryan, Southfield, SMC Associates, Video Communications Corporation, and Wireless Telco submitted a pleading captioned “Petition to Deny” regarding the above-captioned application filed by WinStar Wireless Fiber Corp. (WinStar) for authorization to operate in the 39 GHz band.² For the reasons that follow, we dismiss the subject petitions.

2. *Background.* On May 10, 2000, the Wireless Telecommunications Bureau (Bureau) released a *Public Notice (Auction Closes Public Notice)* announcing the winning bidders in the Commission’s 39 GHz band auction (Auction No. 30), which concluded on May 8, 2000.³ All winning bidders were required to electronically file a long-form application, FCC Form 601, no later than 6:00 p.m. Eastern Standard Time on May 24, 2000.⁴ Both Bala Equity, which was the winning bidder for ten licenses to operate in the 39 GHz band, and WinStar, which was the winning bidder for 931 licenses to operate in the 39 GHz band, filed their respective long-form applications by this deadline. In the *Auction Closes Public Notice*, the Bureau stated that once the long-form applications appeared on public notice as accepted for filing,

¹ Petition to Deny Application of Bala Equity IV, Inc., File No. 0000138886 (dated July 31, 2000) (Petition to Deny Bala Equity).

² Petition to Deny Application of WinStar Wireless Fiber Corp., File No. 0000135598 (dated July 31, 2000) (Petition to Deny WinStar).

³ 39 GHz Band Auction Closes, *Public Notice*, 15 FCC Rcd 13648, 13648 (WTB 2000) (*Auction Closes Public Notice*).

⁴ *Id.* at 13649.

interested parties would have ten days to file petitions to deny.⁵ On June 28, 2000, the Bureau released a Public Notice indicating that long-form applications of Bala Equity and WinStar, as well as certain other 39 GHz band long-form applications for Auction No. 30, were accepted for filing.⁶

3. On July 31, 2000, the subject petitions were filed concerning the Bala Equity and WinStar applications. The petitioners have appealed the Commission's dismissal of their mutually exclusive 39 GHz applications that were filed prior to the adoption of competitive bidding rules for the 39 GHz band to the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit).⁷ They state that should they prevail in this appeal, their reinstated applications will conflict with certain authorizations requested by Bala Equity and WinStar in the above-captioned applications.⁸ Therefore, petitioners request that a grant of these particular authorizations contain an express provision that recognizes and protects the petitioners' first-in-time claim to the spectrum in the event that they prevail before the D.C. Circuit.⁹

4. *Discussion.* Initially, we find that the petitions are untimely. The *Auction Closes Public Notice* specified that petitions to deny a long-form application needed to be filed within ten days from the date of the public notice listing the application as accepted for filing.¹⁰ The above-captioned applications appeared on public notice as accepted for filing on June 28, 2000.¹¹ The deadline for filing petitions to deny these applications was thus July 10, 2000.¹² As indicated, the subject petitions to deny were not filed until July 31, 2000, which was well past the deadline. Therefore, we conclude that the petitions to deny should be dismissed.¹³

5. In addition, we note that despite the caption of the subject petitions, the petitioners do not in fact oppose or request denial of the Bala Equity and WinStar long-form applications.¹⁴ Rather, the

⁵ *Id.* at 13648, 13654; *see* 47 C.F.R. § 1.2108(b) (stating that the period for filing petitions to deny the long-form applications of winning bidders shall be specified by public notice).

⁶ Wireless Telecommunications Bureau Market-Based Applications Accepted for Filing, *Public Notice*, Report No. 570 (WTB rel. Jun. 28, 2000).

⁷ *Bachow Communications, Inc. v. FCC*, No. 99-1346; *Bachow Communications, Inc. v. FCC & USA*, No. 99-1347; *DCT Transmission L.L.C. v. FCC & USA*, No. 99-1360; *Cambridge Partners, Inc., et. al. v. FCC*, No. 99-1361; *Cambridge Partners, Inc., et. al. v. FCC & USA*, No. 99-1362; *Commco, L.L.C., Plaincom, Inc., and Sintra Capital Corporation v. FCC*, No. 99-1363; *Commco, L.L.C., Plaincom, Inc., and Sintra Capital Corporation v. FCC & USA*, No. 99-1364; and *DCT Transmission L.L.C. v. FCC*, No. 99-1365 (D.C. Cir. filed 1999).

⁸ Petition to Deny Bala Equity at 1-2; Petition to Deny WinStar at 1-2.

⁹ Petition to Deny Bala Equity at 3; Petition to Deny WinStar at 3.

¹⁰ *Auction Closes Public Notice*, 15 FCC Rcd at 13648, 13654.

¹¹ Wireless Telecommunications Bureau Market-Based Applications Accepted for Filing, *Public Notice*, Report No. 570 (rel. Jun. 28, 2000).

¹² *See* 47 C.F.R. § 1.4.

¹³ 47 C.F.R. § 1.939(g).

¹⁴ Petition to Deny Bala Equity at 2; Petition to Deny WinStar at 2.

petitioners seek imposition of an express condition on the grant of the Bala Equity and WinStar applications.¹⁵ Thus, the petitions would be most appropriately characterized as an informal request for Commission action.¹⁶ We find that the petitioners' requested action is unnecessary under the circumstances. In this regard, we note that Section 402(h) of the Communications Act, as amended, requires that in the event the D.C. Circuit should render a favorable decision involving the petitioners' applications, the Commission must carry out the judgement of the court.¹⁷ Thus, we conclude that no further action regarding the petitioners' claims is required or warranted in the instant matter.

6. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.2108 of the Commission's Rules, 47 C.F.R. § 1.2108, the petition to deny File No. 0000138886, filed by Linda Chester, Southfield Communications LLC, and Wireless Telco on July 31, 2000 IS DISMISSED.

7. IT IS FURTHER ORDERED that the petition to deny File No. 0000135598, filed by Broadband WirelessAccess Services, Stevan A. Birnbaum, Cambridge Partners, Inc., Linda Chester, HiCap Networks, Inc., PIW Development Corporation, Paul R. Likins, William R. Loneragan, Cornelius T. Ryan, Southfield Communications LLC, SMC Associates, Video Communications Corporation, and Wireless Telco on July 31, 2000, IS DISMISSED.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁵ Petition to Deny Bala Equity at 3; Petition to Deny WinStar at 3.

¹⁶ See 47 C.F.R. § 1.41.

¹⁷ See 47 U.S.C. § 402(h); Applications of Cambridge Partners, Inc., *Memorandum Opinion and Order*, FCC 00-322, ¶ 6 (rel. Sept. 15, 2000); Qualcomm Incorporated, Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, *Order*, FCC 00-219, ¶ 11 (rel. June 8, 2000). Application of Pinelands, Inc. (Transferor) and BHC Communications, Inc. (Transferee) for Transfer of Control of WWOR-TV, Inc., *Memorandum Opinion and Order*, 7 FCC Rcd 6058, 6061 ¶ 13 (1992).